

 wherein actuation of the closing member moves the first end of the pouch from the open configuration to the closed configuration while detaching the pouch from the support member.

Remarks

Claims 1-3, 6-8, 37, 38, 40, 42-48, 50, 51 and 63-79 are currently pending in this application. Claims 1, 2, 43, 47, 50, 63-65 and 69 were rejected under 35 USC §112 because of minor informalities. Claims 1-3, 6-8, 12, 13, 37, 38, 40, 42-48, 50, 51 and 63-65 were rejected under 35 USC 103 as being unpatentable over Demeter in view of Dulebohn.

The claims have been amended as suggested by the Examiner. These amendments have been made in the interest of speedy prosecution of this application and without prejudice to applicants' right to prosecute claims of broader or different scope in a continuing application.

Applicants have copied claims 1 and 20 from U.S. Patent No. 5,465,731, issued on November 14, 1995 in accordance with 35 CFR 1.606 and 1.607 and MPEP 2306 and 2307 as new claims 78 and 79. There is support for these claims in the substitute specification at page 26, line 9 through page 34, line 34 and Figs. 3-1 through 3-13. There is specific support for gaseous seal means for preventing passage of fluid or gases through said apparatus at page 27, lines 25-27 and page 35 of the substitute specification and support for a closing member operatively associated with the pouch, wherein actuation of the closing member moves the first end of the pouch from the open configuration to the closed configuration while detaching the pouch from the support member at page 34, lines 30-34.

It is noted that this application is a continuation of U.S. Serial No. 07/774,016 filed on October 9, 1991; which is a continuation-in-part application of U.S. applications Serial Nos. 07/394,463 filed August 16, 1989; 07/594,768 filed October 9, 1990; 07/608,117 filed November 1, 1990; 07/594,769 filed October 9, 1990; 07/608,121 filed November 11, 1990; 07/594,871 filed October 9, 1990;

07/594,873 filed October 9, 1990; and 07/656,651 filed February 15, 1991. The effective filing date of U.S. Patent No. 5,465,731 (from which pending claims 1 and 20 have been copied) was no earlier than June 30, 1992.

Applicants request that an interference be declared between U.S. Patent No. 5,465,731; 5,341,815 (claims of which have been previously copied) and the present application.

With respect to pending claims 70-73, if the present rejection is maintained, the Commissioner is requested to request reexamination of claims 33-36 of U.S. Patent No. 5,341,815, from which these claims were copied.

Demeter discloses a catheter with encapsulating receptacle, which does not utilize a pseudoelastic material. Dulebohn has been applied to modify the Demeter device and discloses a single wire snare including a unitary piece of wire. Any wire may be employed, but, as recited at column 5, lines 60-65, a shape memory material "could be utilized in a fashion to form even smaller contracted loop ends 32; in turn allowing even smaller diameters for tip 14." If smaller loops are not desired, shape memory material need not be used. The struts of Demeter do not twist or form small loop ends in use. There is no suggestion or motivation in Dulebohn, Demeter, or any of the remaining prior art of record to construct the Demeter device from a shape memory material.

Dulebohn discloses that shape memory material may be used in medical snares. The properties which make the material desirable for those applications, (i.e., contraction of loop ends) have no significance when applied to the device of Demeter. There are no shortcomings described by either Dulebohn or Demeter which would suggest these properties to be desirable. The characteristics taught by Dulebohn would not lead one of skill in the medical instrument art to substitute a shape memory material for the conventional materials of Demeter.

There is no suggestion to construct the Demeter device from a material of the type disclosed in Dulebohn, absent applicants' disclosure. The Examiner is using improper hindsight to construct applicants' invention. Thus, the claims of the present invention are not obvious in view of the prior art of record.

Furthermore, the barrier member, as recited in claim 1, is sealable. As recited in claims 37, 40, 44 and 48, the barrier member is constrained within the housing. Neither of these features is disclosed or suggested by the prior art.

CONCLUSION

In view of the foregoing, applicants believe all claims pending in this application are now in condition for allowance. If it is believed that a telephone conference would expedite prosecution of this application, the Examiner is invited to telephone the undersigned at 415/361-3331.

Respectfully submitted,



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